Office Supreme Court, U.S.
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No. 835

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

GREENWOOD WOOTEN, ET AL,
Petitioners

vs.

THE STATE OF TEXAS,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS FOR THE THIRD SUPREME JUDICIAL DISTRICT OF TEXAS

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Petitioners pray that a writ of certiorari issue to review the judgment of the Court of Civil Appeals for the Third Supreme Judicial District of Texas, and alternatively the judgment of the Supreme Court of Texas denying application for writ of error.

Citations to Opinions Below

The opinion of the Court of Civil Appeals, printed in Appendix B hereto infra p. 14, is reported in 348 S.W. 2d 281.

Jurisdiction

Judgment of the Court of Civil Appeals was entered June 28, 1961. Petitioners duly prosecuted and filed their Application for Writ of Error which was denied by the Supreme Court of Texas and Motions for Rehearing were considered by the said latter Court and finally overruled January 10, 1962.

While filing of a Motion for Rehearing in the Supreme Court of Texas is not a matter of absolute right (Rule 515, Texas Rules Civ. Proc.), consideration is given such motions except in emergency situations. *Wright v. Broeter*, 145 Tex. 142, 196 S. W. (2) 82. Time for filing here runs from date of overruling second motion. *Chicago v. Basham*, 249 U.S. 164; *Sullivan v. Texas*, 203 U.S. 416. The term of the Texas Supreme Court ended December 31, 1961. (Const. Texas, Art. 5, Sec. 3a).

The jurisdiction of this Court is invoked under 28 U.S.C.A., Section 1257, (3).

Question Presented

Whether the State of Texas, by its conduct in condemning an apartment house under the power of eminent domain, can by so doing largely destroy the value of personal property—furniture therein—and deny compensation to the property owner.

Constitutional Provisions and Statutes Involved

The Constitution of the United States, Amend. 5 and the Constitution of the State of Texas, Art.

1, Sec. 17, are involved. They are printed in Appendix A infra p. 13.

Statement of the Case

Petitioners owned a furnished apartment house near the Capitol grounds in Austin, Texas. This apartment house building was taken under the power of eminent domain by the State of Texas. Such taking in effect destroyed the value of Petitioners' furniture reducing it in market value from $15,000 to $2,500.00. (Tr. 55).

Said Bill of Exceptions reads as follows:

> "BE IT REMEMBERED that upon trial of the above entitled and numbered cause held in the County Court in Travis County, Texas, beginning September 20, 1960, the following proceedings were had, to all of which, as noted, defendants duly made their exceptions and duly made and presented and there is hereby allowed, a Bill of Exceptions with respect thereto.
>
> "Defendants offered to testify, and if permitted, each of them would have testified, that the apartments in question contained furniture and movable items, of a kind appropriate to a furnished apartment house of a reasonable value in excess of $15,000.00, and would have further testified that by reason of having to move such out of the apartment house on account of the condemnation, such furniture and movable items *became of little*, if any value, and worth not more than $2,500.00. This offer, on objection, was refused."